

# **EXHIBIT 39**



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I N D E X

People vs. Xavier Walker and Jovanie Long

Date of Hearing: 2-19-03

Page Numbers: EE-1 through EE-95

PROCEEDINGS

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MOTION TO SUPPRESS EVIDENCE (Long)

WITNESSES:	DX	CX	RDX	RCX
MICHAEL PIETRYLA	9	31		
JOHN RIORDAN	51	63		
ROBERT BARTIK	65	72		
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ID	REC.
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72	

People's 1

People's 2

People's 3

Defendant's 1

1 notations on those forms and whether those forms  
2 existed on that day.

3 THE COURT: You can call him as your  
4 witness.

5 MR. CONNIFF: All right. No further  
6 questions.

7 MS. COLEMAN: I have nothing further,  
8 Judge, from this witness.

9 THE COURT: Step down, sir.

10 (Witness excused.)

11 MS. COLEMAN: Judge, I have one other brief  
12 witness. It's the polygraph examiner.

13 THE COURT: Okay.

14 (Brief pause.)

15 THE COURT: Please raise your right hand.

16 (Witness sworn.)

17 THE COURT: Please be seated.

18 WHEREUPON,

19 ROBERT BARTIK,  
20 called as a witness on behalf of the People of  
21 the State of Illinois, having been first duly sworn,  
22 under oath was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. COLEMAN:

1           Q.    Officer, could you please tell the judge  
2   your name, your star number, and your unit of  
3   assignment?

4           A.    Police Officer Robert Bartik, B-a-r-t-i-k,  
5   Star Number 3078, Chicago Police Department, Forensic  
6   Services Division.

7           Q.    And what do you do in the Forensic Services  
8   Division?

9           A.    I'm a polygraph examiner.

10          Q.    So do you administer polygraph exams?

11          A.    Yes, ma'am.

12          Q.    I'm going to direct your attention now to  
13   August 5th of the year 2000. Were you called to  
14   administer a polygraph exam to a subject by the name  
15   of Jovanie Long?

16          A.    Yes, ma'am.

17          Q.    Was there an arrangement for the detectives  
18   to bring Jovanie Long to Homan Square on August 5th  
19   of 2000 at approximately 8:00 a.m.

20          A.    Yes, ma'am.

21          Q.    What time did you arrive at Homan Square  
22   that morning?

23          A.    About 8:15.

24          Q.    When you arrived at Homan Square, did you

1 meet with anybody?

2 A. When I got there, Detectives Riordan and  
3 Pietlak (sic) were already there with Mr. Long. I  
4 escorted them into my office. I put Mr. Long into  
5 the polygraph laboratory and met with Detective  
6 Riordan and Pietlak in my office.

7 Q. When you say, "Pietlak," is that Pietryla?

8 A. Yes.

9 Q. The detective that was in the back room?

10 A. Yes, ma'am.

11 Q. Do you see the person that you indicated  
12 was Jovanie Long in the courtroom today?

13 A. Um, yeah. The gentleman in the beige  
14 Department of Corrections suit (indicating.)

15 MS. COLEMAN: Judge, may the record reflect  
16 the in-court identification of the defendant?

17 THE COURT: It shall.

18 BY MS. COLEMAN:

19 Q. When the defendant -- you said the  
20 defendant was put in one room; correct?

21 A. He was placed in the polygraph laboratory.

22 Q. Where did you, Detective Riordan, and  
23 Detective Pietryla go?

24 A. They were in my private office.

1           Q.     What did you do then?

2           A.     They apprised me of the situation, of the  
3 facts of the case.

4           Q.     Where -- was the defendant in the room at  
5 that time?

6           A.     No, ma'am.

7           Q.     After they apprised you of the facts in the  
8 case, what did you do?

9           A.     After I got all the necessary information,  
10 I then entered the polygraph laboratory. I  
11 introduced myself to Mr. Long as a police officer,  
12 told him that I was here to administer a polygraph  
13 examination to him, that the taking of a polygraph  
14 examination was a voluntary thing, that he did not  
15 have to take it if he did not wish to.

16                   I then presented him with a polygraph  
17 subject consent form which I read to him verbatim  
18 from the form.

19           Q.     During this conversation with the  
20 defendant, was there anybody else present besides you  
21 and the defendant?

22           A.     No, ma'am.

23                   (WHEREUPON, People's Exhibit

24                   Number 3 was marked for

1                                   identification.)

2

3       BY MS. COLEMAN:

4               Q.     I'm going to show you what I have marked as  
5       People's Exhibit Number 3 for identification.

6                       MS. COLEMAN:   May I approach?

7                       THE COURT:   Go right ahead.

8       BY MS. COLEMAN:

9               Q.     Officer, I'm going to show you People's  
10       Number 3.   Do you recognize that?

11              A.     Yes.

12              Q.     What is that?

13              A.     This is the photocopy of the polygraph  
14       subject consent form of Mr. Jovanie Long.

15              Q.     Is there anything that you read to the  
16       defendant on that form before he signs it?

17              A.     Yes, ma'am.   I read the entire form  
18       verbatim, including the Miranda warnings.

19              Q.     And what else does that form tell him  
20       besides Miranda warnings?

21              A.     That he has -- that he is volunteering for  
22       the test, that I can give the information to the  
23       proper people, a form of release, and that he has a  
24       right to have a copy of the results of the polygraph



1       himself.

2           Q.     And after you advised him of that, did he  
3       sign that form?

4           A.     Yes, ma'am, on two different spots.

5           Q.     And after that, did you then begin asking  
6       him questions?

7           A.     I then went into a pretest interview, yes,  
8       ma'am.

9           Q.     What is a pretest interview?

10          A.     Well, the polygraph is actually broken up  
11       into two different phases. The first phase is an  
12       interview where we get the subject accustomed to  
13       being there talking to us. We want to make sure that  
14       he knows what the issue at hand is, why he's taking a  
15       polygraph test.

16                       We do a small background health check  
17       to make sure that he's suitable to take the test. We  
18       develop questions that we're going to ask him on the  
19       test. We review the questions on the test with him  
20       before we actually administer the polygraph  
21       examination.

22                       The second phase is the actual  
23       administration of the test.

24          Q.     And when you begin administering the

1 test -- what did you do here?

2 A. I started talking to him, interviewing him,  
3 and explaining to him the process, talking to him  
4 about the situation.

5 Q. Now, at any point in time did you ask him  
6 specific questions about this event, about the event  
7 that happened on May 13th of 2000?

8 A. Yes.

9 Q. What did you ask him?

10 A. I asked him if he did it.

11 Q. And what did the defendant tell you?

12 A. The defendant made a statement.

13 Q. What did he tell you?

14 A. He told me that during the robbery, he did  
15 shoot the victim.

16 Q. Now, after the defendant made that  
17 statement to you -- first of all, when he made that  
18 statement, was he in any way hooked up to any kind of  
19 machine?

20 A. No, ma'am.

21 Q. So the polygraph had not actually begun  
22 yet?

23 A. No, ma'am.

24 Q. What did you do after the defendant made

1       that statement to you?

2           A.     I immediately opened up the polygraph  
3     laboratory door. I summoned Detective Pietlak and  
4     Riordan into the polygraph laboratory.

5                   Once they entered the room, I told  
6     Mr. Jovanie Long, tell the detectives what you just  
7     told me. At which point, he repeated what he had  
8     just told me.

9           Q.     Again, he made another admission?

10          A.     Yes, ma'am.

11          Q.     What did you do then?

12          A.     I left the room.

13          Q.     And was there ever a polygraph examination  
14     given of the defendant that day?

15          A.     No, ma'am.

16          Q.     Why not?

17          A.     He had made an admission.

18                   MS. COLEMAN: I have no further questions,  
19     Judge.

20                               (WHEREUPON, Defendant's Exhibit  
21                               Number 1 was marked for  
22                               identification.)

23                               CROSS EXAMINATION

24                               BY MR. CONNIFF:

1 Q. Is it Officer Bartik?

2 A. Yes.

3 Q. Let me show you what I have marked as  
4 Defendant's Exhibit 1 for identification.

5 MR. CONNIFF: May I approach, Judge?

6 THE COURT: Sure. Do you want to show that  
7 to counsel?

8 MS. COLEMAN: I think I see it.

9 MR. CONNIFF: Sorry.

10 MS. COLEMAN: That's okay. I see it.

11 BY MR. CONNIFF:

12 Q. Officer, let me ask you, are those notes  
13 that you, yourself, made?

14 A. Yes, sir.

15 Q. And do you see at the top of those notes  
16 what appears to be a fax transmission date?

17 A. Yes.

18 Q. And what is the date of that fax  
19 transmission date?

20 A. February 16, 2003.

21 Q. So just a couple of days ago?

22 A. Yes, sir.

23 Q. So these notes were made by you on or about  
24 August the 5th of the year 2000?

1           A.     Yes, sir.

2           Q.     And they were just transmitted by fax  
3     to the State's Attorney on February the 16th of  
4     2003?

5                   MS. COLEMAN:  Objection to the relevance,  
6     Judge.

7                   THE COURT:  I'll allow it.  I'm hard-  
8     pressed to see the relevance.

9     BY MR. CONNIFF:

10          Q.     When did you make these notes?

11          A.     Immediately prior and after talking to  
12     Mr. Long.

13          Q.     And in this particular note, Defendant's  
14     Exhibit 1, this contains your report of the alleged  
15     statement which Mr. Long made to you?

16          A.     A paraphrase, yes, sir.

17          Q.     And the first time you made known to the  
18     State's Attorney that you had notes which referenced  
19     that statement was when?

20                   MS. COLEMAN:  Objection to the relevance.

21                   THE COURT:  Sustained.

22     BY MR. CONNIFF:

23          Q.     What -- where were these notes kept from  
24     August the 5th, 2000, until you produced them?

1 MS. COLEMAN: Objection to the relevance.

2 THE COURT: Sustained.

3 BY MR. CONNIFF:

4 Q. Did anyone tell you to make this  
5 notation of this alleged statement that Mr. Long made  
6 to you?

7 A. No.

8 Q. You have done this in other cases?

9 MS. COLEMAN: Objection to the relevance.

10 THE COURT: Sustained.

11 BY MR. CONNIFF:

12 Q. If you have made notes of statements which  
13 defendants make to you in other cases, what have you  
14 been instructed to do with regard to the notes of  
15 those statements?

16 MS. COLEMAN: Objection, relevance.

17 THE COURT: Sustained.

18 BY MR. CONNIFF:

19 Q. Did you cause this note of the alleged  
20 statement which is Defendant's Exhibit 1 to be  
21 transmitted to any supervisor or anyone above  
22 you or State's Attorney following your making this  
23 note?

24 MS. COLEMAN: Objection, relevance.

1 THE COURT: Sustained.

2 MR. CONNIFF: I have nothing further,  
3 Judge.

4 MS. COLEMAN: I have nothing further,  
5 Judge.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MS. COLEMAN: Judge, at this time, the  
10 People rest in our case-in-chief.

11 MR. CONNIFF: Judge, we call Detective  
12 Riordan.

13 THE COURT: Okay.

14 (Brief pause.)

15 THE COURT: Sir, you remain under oath to  
16 tell the truth.

17 THE WITNESS: Yes, sir.

18 WHEREUPON,

19 JOHN RIORDAN,  
20 called as a witness on behalf of the Defendant,  
21 having been first duly sworn, under oath was examined  
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CONNIFF: